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Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Feb. 3, 1902. No. 240

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

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STATEMENT.

The plaintiff (defendant in error), as receiver of an Iowa National Bank, commenced an action at law against defendant (plaintiff in error), alleged to be administrator of the estate of Sumner W. Matteson, deceased, to recover on certain promissory notes executed by Sumner W. Matteson in his life

time, alleging that the estate was yet in process of settlement in the probate court for Ramsey County, Minnesota (Record, pages 1 to 7). The defendant answered alleging that the estate had been fully administered and distributed in said probate court, and it was no longer administrator; that an administrator having been duly appointed, notice given to creditors, the estate duly administered, finally settled and distributed, and the plaintiff having failed to present the notes, or any claim on account thereof, to the probate court, or to commence any action to recover on the same until after the expiration of the time fixed to present claims and until after final settlement of the estate, the action was barred (Record, pages 8 to 12).

The answer also set forth a further defense which was abandoned and is entirely out of the case. A reply was filed which will be found at pages 13 to 14 of the record.

The case was submitted upon an agreed statement of facts duly filed. The facts as stipulated, in brief, were: Sumner W. Matteson, from a time anterior to the execution of the notes sued on until his death, was a citizen of Minnesota, residing in St. Paul in Ramsey County, where he died, July 22, 1895, leaving real and personal estate there situate. On September 3, 1895, the probate court of that county duly appointed the defendant administrator of his estate. Notice to creditors was given and the administration duly had in accordance with the laws of Minnesota. The final account of administration was settled and allowed, and final decree of distribution was entered

April 27, 1896, determining that the estate of the deceased had been fully administered and assigning to and vesting in the heirs and next of kin of the deceased certain real and personal property therein described and "*all other of the estate of the deceased in the state of Minnesota.*" The officers and directors of the bank knew, as early as September 1, 1895, that said Sumner W. Matteson had died in St. Paul a resident of said city. The plaintiff was appointed receiver of the bank November 24, 1896, and had no such knowledge until December 26, 1896. The managing officers of said bank had knowledge of the pendency of the said probate proceedings as early as November 1, 1895. The said bank never presented its claim to said probate court, and commenced no action thereon in any court, and no action was commenced until the plaintiff commenced this action in the federal circuit court of Minnesota on January 22, 1897. Facts were admitted showing distribution made by defendant after the final decree had been entered. There are other immaterial facts admitted. (For stipulation of facts see record, pages 14 to 31).

No claim was made at the trial nor in the circuit Court of Appeals, that any of the proceedings in the probate court were irregular or insufficient, but the sole question was as to the effect of the law of Minnesota and the probate proceedings. The reply raised the question of the regularity of the notice given of the order limiting the time to present claims, but that position was abandoned, and the facts stipulated show that notice was given as required by the statute. The plaintiff claimed that the settlement and

allowance of the final account of the administrator and the decree of distribution were not effectual to close the administration and discharge the administrator; that the laws of Minnesota fixing the time within which claims shall be presented did not bind the plaintiff in the federal court; that the plaintiff is not bound by the probate proceedings. The defendant asserted to the contrary.

The trial judge was of opinion that the statute of Minnesota requiring claims to be presented to the probate court within the time limited is not binding on the Federal Courts. Touching the claim that the estate had been fully administered and the administrator gone out of office, the trial judge was of opinion, there being no statute in express terms authorizing the discharge of an administrator, that the (alleged) common law rule prevailed and the administrator continued in office notwithstanding any attempt of the probate court to discharge. He also doubted that there was a sufficient discharge, even though the court had authority, there being no order in terms discharging the administrator. Thereupon he gave judgment for $13,535.06 to be satisfied out of the property and effects of the deceased and ordering *that it be certified to the probate court as a claim duly approved, established and allowed against the estate of the deceased.* This judgment was taken to the Circuit Court of Appeals on writ of error and affirmed by that court. The circuit court of appeals was of opinion that the administration was pending; that the administrator continued in office and subject to the jurisdiction of the probate court; and that be-

cause the statute permitted the probate court in its discretion within eighteen months and before final settlement of the estate to allow the claim of a creditor, the federal courts must be conceded the same power as to claims of non-resident creditors. (For opinion of C. C. A. see Record, pp. 45 to 48).

The case was removed to this Supreme Court from the Circuit Court of Appeals on writ of error.

ERRORS ASSIGNED.

1. The Court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The Court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records, in favor of the defendant.

3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are

not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

6. The said judgment contravenes Article IV, Section 1, of the Constitution of the United States in that it does not give full faith and credit to the public acts of the state of Minnesota relating to the property and estate in Minnesota of citizens of that state dying therein, and in that it denies full faith and credit to the judicial proceedings of a probate court in said state duly had in a matter of which it had, and had duly acquired jurisdiction.

7. The said judgment contravenes Article X of the Amendments to the Constitution of the United States in that it denies to the state of Minnesota, the right reserved to it in said Article X, by law to provide for, control and regulate the administration and disposition of the estate and property, within the state, of its deceased citizens who die within the state.

PRELIMINARY.

Minnesota probate courts are established in the constitution of the state, and have exclusive jurisdiction of the estates of deceased persons. Administration is not according to the common law, but entirely according to statute, the legislature in the probate code having enacted a complete system of probate law, according to which the rights and remedies of creditors against the estate are materially different than at common law. The probate of an estate is

a proceeding in rem in which the probate court, through its officer, the administrator, takes into its possession the estate of the deceased, and appropriates it to the payment of the debts of the deceased.

61 Minn. 343, *McNamara v. Casserly.*

The state constitution and statutory provisions bearing upon the question involved are the following:

Constitution Art. VI., Sec. 7. "There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. * * * A probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution."

General Statutes 1894:

Section 4523. "The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

Section 4524. "The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

Sec. 4527. "When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court may, on petition of the executor or administrator, order the sale of the real estate or so much thereof as may be necessary to pay the same."

Sec. 4471, provides that real estate shall descend subject to the debts of the intestate.

Section 4638. "Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other times as he is required by the court, until the estate is wholly settled."

Section 4639. "When the estate is fully administered, the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition."

Section 4640. "Upon the filing of said petition the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law."

Section 4641. "On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examiation may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator, whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law."

Section 4642. "In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this state in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in such county under said decree."

Section 4509. "At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Section 4510. "The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested."

Section 4511. "All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

Section 4514. "No action at law for the recovery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code."

Section 4517. "Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets, if any."

Section 4522. "In case of appeal from the allowance or disallowance of any claim in whole or in part, the district court shall certify to the probate court the decision or judgment rendered therein."

Sec. 4665 provides for an appeal to the District Court.

Sec. 4668 provides for serving notice of appeal.

Sec. 4672 provides that the District Court shall try the case as if originally commenced in that court.

Sec. 4673 provides that pleadings shall be made up as in civil actions, and the issues of fact tried as in other actions.

Sec. 4676. In case of a reversal or modification of the order appealed from the District Court makes such order as the probate court should have made, and certifies its judgment to the probate court.

Sec. 4730. "The probate court may, at any time, correct, modify or amend its records to conform with the fact sin the same manner as a district court."

ARGUMENT.

The first ground of defense is that the defendant when sued was not administrator. Both the trial court and the circuit court of appeals proceeded upon the theory that the defendant was then administrator. The judgment is against the defendant only as such administrator, and the opinion filed by the circuit court of appeals expressly holds that the administrator continued in office. That the judgment cannot be sustained, if when sued the defendant was not administrator, is clear beyond need for argument.

The first question for consideration is: Was the defendant administrator at the time the action was commenced? The answer to this question of course depends upon the law of Minnesota. The administrator was the officer of a Minnesota court, appointed by that court to administer upon property left within the state by a resident of Minnesota who had died in that state. Necessarily the length of time the administrator should continue in office, and when and how cease to be administrator, depends upon the law of Minnesota. The statutes of Minnesota do not provide for any formal order discharging an administrator. They provide that when the estate has been fully administered the court shall make an order settling and allowing the administrator's final account and make a decree distributing the estate to the persons by law entitled thereto. The legal effect of such allowance of the final account and such final decree is to end the administra-

tion and render the administrator *functus officio.* That this is so is clearly shown in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*, which was a case involving not only this same question, but also the same administration proceeding now here under consideration. This is the latest opinion of the Supreme Court of Minnesota in which the question has been considered, and in it every phase of the question is considered and the subject discussed more at length than in any former decision by that court. That such is the law of Minnesota was not in doubt before that decision was rendered, but was clear from the Statutes of the State, as well as from the prior decisions of the Supreme Court of Minnesota.

The evident theory of the Probate Code is that the office of administrator is temporary and ceases with full administration of the estate. Sec. 4523, above set out, requires the court to limit the time within which the estate shall be settled. Secs. 4639, 4640, 4641, 4642, above set out, provide for allowing the administrator's *final* account, when the estate shall have been *fully* administered, and for a decree of distribution to be made *after* the estate shall have been *fully* administered and the administrator's *final* account allowed. There is no provision of statute requiring, and none authorizing, the probate court thereafter to exercise any jurisdiction in the matter. The probate court thereafter cannot even compel the administrator to deliver the property to the distributees, but to obtain possession they must resort to another court.

The decisions of the Supreme Court of Minnesota are all to the same effect. See the following:

33 Minn. 94, *State v. Probate Court of Sibley County.* On page 96, the court says: "The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's account and his discharge and there is no attempt to re-open it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, than if there had never been any administration and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out in the statute."

40 Minn. 296, *State v. Probate Court of Ramsey County.* The court says (page 299): "The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs do not operate to revive the administration and open the judgment, or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 22, *Stackhouse v. Berryhill.* After an estate had been administered as intestate, a proceeding to probate a will of the deceased was instituted. The court says (page 22): "Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the probate court. The letters of administration were beyond recall, for their mission had ended. The order of the court whereby this will may be allowed in this state cannot of itself reverse the first administration, nor will it have the effect to vacate and set aside the final decree therein."

61 Minn. 91, *Schmidt v. Stark*, holds that the decree of distribution cannot be entered until after the estate has been fully administered, and that the entry of the decree of distribution divests the probate court of jurisdiction and thereafter it cannot even compel the administrator to turn the property in hand over to the distributees.

86 N. W. Rep., 18, *Ganser v. Ganser*, (Minnesota Supreme Court):

"The estate was fully administered, and final account made, upon which, in the due course of law, the Probate Court duly made its final decree, distributing the residue of the estate, after allowance of the account of the administratrix, to the heirs of the deceased. The final decree was made in 1891, and, so far as appears, was acquiesced in by all interested parties, *and the administration of the estate became then finally ended and closed.*"

87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*: The syllabus, prepared by the court, is, "1. The Probate Code of this state makes no provision for the formal discharge of an administrator, but the necessary legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the

deceased from the jurisdiction of the court, and to render the office of administrator, which depends upon such jurisdiction, *functus officio*.

2. After the estate has been so settled and assigned, and while the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate which is in his possession, or came into his possession."

The answer made by plaintiff at the trial and in the Circuit Court of Appeals to this proposition asserted by the defendant, and to the authorities cited, was in brief as follows:

1. By the allowance of the final account and the entry of the decree of distribution the Probate Court divested itself of jurisdiction over the property (the estate of the deceased), but not of jurisdiction over the administrator.

2. The record shows that neither probate court nor administrator understood that the jurisdiction of the probate court had ceased.

3. The probate court and the administrator continued to exercise jurisdiction in the administration after the entry of the final decree, because thereafter a claim was allowed against the estate, and the probate court amended the final decree by inserting the description of certain lands not specially described in the decree as originally entered, and by correcting the description of other lands which were incorrectly described in the decree as originally entered.

4. There was nothing in the record to show that the administrator had complied with the final decree by making distribution in accordance with its provisions.

5. The administrator continued in office to administer upon any property which might be discovered thereafter.

That no point in this answer was well taken was clear from the constitutional and statutory provisions of the State and from the decisions of the Supreme Court of Minnesota even prior to the decision in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court*. But the opinion in that case meets and refutes each of the points.

The jurisdiction of the probate court over the administrator was incidental to its jurisdiction over the property. When its jurisdiction over the property ceased, jurisdiction over the administrator necessarily was at an end.

The understanding of the probate court and of the administrator is immaterial, because that understanding could not avoid the legal effect of the final decree. But the record in fact shows that the administrator and the court understood that the administrator had been discharged and the jurisdiction of the court ended. (See record, pp. 19, 20, petition and order to correct final decree, and pp. 29, 30, the acts of the administrator after entry of final decree).

Neither the administrator nor the court took any steps in the administration of the estate after the entry of the final decree. It is true that an officer of

the Trust Company, after the entry of the final decree, made the following entry on a claim which had been filed before the entry of the decree: "We allow the within claim this 20th day of May, '96. Security Trust Company, by Chas. D. Matteson, Sec'y." But the administrator has no authority to allow a claim. That can be done only by an order of the court (Sec. 4517 cited above). No such order was made, and no change was made in the final account and the court took no action in the matter. The amendment of the final decree was not a step in the administration. Describing property not theretofore particularly described in the final decree, simply particularized what was included in the decree as originally entered under the terms "all other the estate of the deceased in the State of Minnesota." As said by the Supreme Court of Minnesota, "The decree was corrected, not in the exercise of any jurisdiction over the estate, but by virtue of the power of the court to amend its records to conform with the facts; that is, to make the records speak truly as to the past official acts of the court," and under the authority of Sec. 4730 above set out.

The stipulated facts show that the administrator had in fact made distribution in accordance with the terms of the final decree (See record, p. 29, 30). But if it were otherwise it would be immaterial, because the statute does not require, nor provide for, any report to be made to the probate court showing that distribution has been made, nor has the probate court any jurisdiction to enforce distribution in accordance with its final decree. The remedy is to

be sought in another court. The reason is this: By the constitution of Minnesota the jurisdiction of that court is confined to the "estates of deceased persons" and does not extend so far as to permit it to try questions of disputed titles or rights to possession. While the final decree determines who are the persons by law entitled to succeed to the property of the deceased and in what proportions, and that the administrator has not any longer the title or right to possession by virtue of his office, it does not determine who in fact has the title and right to possession at the time of the entry of the final decree. The person named in the final decree may have transferred his interest, or his title and right to possession may have been divested by attachment or levy and sale on execution, or by insolvency proceedings. In such case the final decree would be no protection to an administrator if he should deliver the property to the person named in the final decree. All questions of title and right to possession, after the claims of administration have been satisfied, concern the property and estate of living persons only, and of such questions the probate court has not jurisdiction.

The administrator did not continue in office to administer on after discovered property. There could be no after discovered property, because the final decree adjudged that the estate had been fully administered, and distributed not only the property therein particularly described, but also "all other the estate of the deceased in the State of Minnesota." (See Record, pp. 17 to 19 for final decree). But, if it were not so broad in its terms, that the adminis-

trator would not have continued in office was settled by 40 Minn, 296, *State v. Probate Court*, cited above, long before the decision in *State ex rel Matteson v. Probate Court of Ramsey County.*

It was also suggested by the plaintiff, by way of argument, that when the administrator ceases to exist or is discharged the sureties on the administration bond are discharged and thereafter there can be no suit on the bond, and therefore the administrator must have continued in office. The administrator in this case being a Trust Company, by law was exempt from giving bond and in fact gave none. But it would make no difference if it were otherwise. The liability of the administrator on his bond is a personal liability—a liability imposed upon him personally for damages resulting from a failure to perform the duties of administrator, and to be paid, not out of the estate which he represents, but out of his individual estate. The final decree operates to change every liability of the administrator from an *official* liability to a *personal* one.

Woerner's Am. Administration (2 ed.) Vol. 2, *p. 1248, Sec. 569.

67 Cal. 279, *Melone v. Davis.*

The opinion of the Circuit Court of Appeals, as far as it bears upon the question of the continuance of the administrator in office, is fully met by the Minnesota decisions above cited, and particularly by 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County.*

The second ground of defense is that plaintiff's claim is barred by reason of the failure to present it to the probate court, or to commence the action, within the time limited by order of the probate court for creditors to file claims, and if not, then it is barred by reason of the failure to present the claim to the probate court, or to commence the action, prior to the close of the administration.

It is settled that the failure to so present the claim to the probate court, according to the law of Minnesota barred the claim so that the plaintiff has no right which he could enforce in any court of Minnesota.

Sec. 4511, set out above.

39 Minn. 212, *Fern v. Leuthold.*

47 Minn. 382 (384) *Hill v. Nichols.*

61 Minn. 366, *Hantch v. Massolt.*

66 Minn. 246 (249, 250) *State v. Probate Court of Rock County.*

78 N. W. Rep. 95 (98) *Fitzhugh v. Harrison.*

We understand the plaintiff to concede that the claim is barred according to the law of Minnesota and that he has no right which he can enforce in any State Court. But he contends that the Minnesota Statute does not bind him in the Federal Court. Therefore the question for consideration is: Do the Statutes of Minnesota, particularly Sec. 4511 above set out, bind non-residents of Minnesota in the Federal Courts? The deceased resided in Minnesota at the time he gave the obligations sued on, continued to reside there until his death, and the law of Min-

nesota as to the estates of deceased persons and the rights and remedies of creditors against the same, remained unchanged. Hence there is no question of violation of contract rights, ant the sole question is: Does the mere fact that plaintiff is a non-resident and sues in a Federal Court render the Minnesota Statute nugatory?

The plaintiff has only the personal promise of the deceased to pay the debt. He has no contract right or claim to have his debt paid out of the property of the deceased, except in so far as the law of Minnesota is part of the contract. His right to have his debt paid out of the estate of the deceased is only such as the law gives. The State has the right to provide what property left within its borders, upon the death of a resident of the State, shall be applicable to the payment of the debts of the deceased: to provide to what extent such property shall be taken for the payment of such debts, and to provide in what manner and within what time such property may be applied to the payment of such debts. Congress has no power to legislate concerning the matter, or, if it has, it has not seen fit to exercise the power, but has left the State free to act unrestrained by congressional legislation. There is no general law on the subject which can override the express statutory enactments and decisions of the courts of Minnesota. Hence, when a Federal Court comes to investigate the question of plaintiff's right it necessarily looks to the law of Minnesota for the measure of that right, because there is no other law giving plaintiff any right against the estate of the deceased.

While the Federal Court may proceed according to its own methods of investigation in any investigations it may make to determine whether the right of action exists which plaintiff claims to have, yet it cannot create nor confer that right of action, but must find it existing in the law. Inasmuch as there is no law except the law of Minnesota, giving the creditor the right to have the property of the deceased in Minnesota applied to the payment of his debt, the Federal Court must find that right of action to exist in the law of Minnesota. Otherwise it must declare that there is no right of action. So far as the Statute of Minnesota is one conferring, creating or limiting the right of the creditor to have his debt paid out of the property of the deceased, and is not one merely providing a method of enforcing a right otherwise existing, it is of the substance of the right of action and not a matter of remedy, and is necessarily binding on the Federal Court. This is true whether the Statute be viewed as a statute of limitations or as a rule of property, because in either case no right of action exists unless the facts bring the case within the terms of the statute. The courts generally have held similar statutes to be binding on the Federal Courts.

72 Ala. 314, *Jones v. Drewry*, is a case involving a statute in substance the same as the Minnesota statute and in which this same question was presented to the Court. The court examined at length the question here presented and held that the statute was binding on the non-resident in the Federal Court.

It also showed wherein the decisions cited in support of the contrary contention are not applicable.

10 Fed. Rep. 53, *Pulliam v. Pulliam*. In this case, reconsidering a former decision by him in the same action, Judge Hammond, on page 73 to 79, examines and discusses the grounds upon which such statutes stand, more fully than any other opinion we have seen. He concludes that they are not only statutes of limitations, but also rules of property, and binding on the Federal courts, and that the contrary contention finds no support in Union Bank v. Jolly, Payne v. Hook and other cases cited.

27 Fed. Rep. 405, *Dodd v. Ghiselin*, opinion by Brewer, J., holds that the laws of the state for settlement of estates of deceased persons are binding on the Federal courts.

19 Fed. Cases (Case No. 11376), page 1260, *Pratt v. Northam*, opinion by Justice Story, holds a like statute to bind the Federal courts, even in equity. He says (page 1261):

"This statute of limitations as to executors and administrators, is not created for their own security or benefit; but for the security and benefit of the estates, which they represent. It is a wholesome provision, designed to produce a speedy settlement of estates, and the repose of titles derived under persons who are dead."

63 Fed. Rep. 208 to 213, *Walker v. Brown*. The court of appeals, Eighth Circuit, discusses the jurisdiction of the federal courts over estates of deceased persons. Says the court: "In other words, the jurisdiction of these courts over the administration of

estates is less extensive than that which was formerly exercised by the English chancery courts. Their jurisdiction at best is but a limited one, depending as it does in all cases either upon the existence of a federal question or diverse citizenship; and they are bound, like the state courts, to render a faithful obedience, within certain well-defined limits, to local administration laws that have now rendered it possible to administer estates fairly and equitably without invoking the extraordinary powers of a court of chancery."

5 Peters, 523, *Smith v. Union Bank*. Held, rights of creditors in estates of deceased persons depend on the law where administration is had.

4 How, 498, *Aspden v. Nixon*: "It is proper, however, to remark in this connection, that the courts of the United States held in Penasylvania are administering the laws of that state, and are bound by the same rules governing the local tribunals; and that by those laws a devisee, before he can take a legacy, must give security that if any debt or demand should afterward be recovered against the estate of the testator, the devisee shall refund."

76 U. S. (9 Wall.) 754-5, *Walker v. Walker's Exr.* "The circuit courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different states, and will enforce the same rules in the adjustment of claims against them that the local courts administer in favor of their own citizens."

88 U. S. (21 Wall.) 280, *Yonley v. Lavender*: "The administration laws of Arkansas are not merely rules of practice for the courts, but laws limiting the rights of parties, and will be observed by Federal courts in the enforcement of individual rights."

113 U. S. 449, *Morgan v. Hamlet*, held a statute, substantially like the Minnesota statute, to be binding on the Federal court. It was an action in equity. The court said (page 451): "In Arkansas it appears that there is a special statute of limitations governing claims against estates of deceased persons, commonly called the statute of non-claim. It is as follows:

'All claims not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred.'" Again (page 452):

"Whatever its description, it was a claim against the estate of John G. Morgan, and for which his personal representative was in the first instance liable; and the statute is a bar to every such claim, unless presented within the time prescribed."

132 U. S. 484, *Rio Grande R. Co. v. Gomila*: "We do not question the general doctrine laid down in Yonley v. Lavender, 88 U. S. 276, 279, 280, to the effect that the administration laws of a state are not merely rules of practice for the courts, but laws limiting the rights of the parties, and will be observed by the Federal courts in the enforcement of individual rights, and that those laws upon the death of a party withdraw the estate of the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. * * * We do not recall any case now where the Federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicil has confided the general administration of estates, etc."

The following decisions are pertinent to this proposition:

172 U. S. 358 *M. K. & T. Trust Co. v. Krumseig*: "We think it a satisfactory reply to such a proposi-

tion that the complainants in the present case were not seeking equity, but to avail themselves of a substantive right under the statutory law of the state. It seems to be conceded, or, if not conceded, it is plainly evident, that if the cause had remained in the state court where it was originally brought, the complainant would have been entitled, under the public policy of the State of Minnesota, manifested by its statutes as construed by its courts, to have this usurious contract canceled and surrendered without tendering payment of the whole or any part of the original indebtedness. The defendant company could not, by removing the case to the Federal court, on the ground that it was a citizen of another state, deprive the complainants of such a substantive right. With the policy of the state legislation the Federal courts have nothing to do. If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and canceled by the courts, such a view of public policy, in respect to contracts made within the state and sought to be enforced therein, is obligatory on the federal courts, whether acting in equity or at law. The local law, consisting of the applicable statute as construed by the supreme court of the state, furnishes the rule of decision."

72 U. S. (5 Wall.) 419, *Ewing v. City of St. Louis*: It was an action in equity for relief from an assessment for local improvements. The court said: "The complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the state courts. If in the latter courts equity would afford no relief, neither will it in the former."

80 U. S. (13 Wall.) 243 *Ex parte McNiel*. In an action to recover a penalty under pilot regulations established by the state, it was said with reference

to federal courts: "Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal of the same locality."

103 U. S. 559, *Ouachita County v. Wolcott*, seems to us to fully sustain our contention that this statute is binding against the non-resident in the Federal Court, and to answer the objections urged by plaintiff and the Circuit Court of Appeals. In that case a failure to present a warrant to the county court within the time fixed by an order of court made pursuant to statutory authority, was held to be a defense to an action commenced in the federal court to recover on the warrant, though the action was commenced in the Federal Court before the expiration of the time fixed by the order of the court.

Plaintiff argued, and the Circuit Court of Appeals seemed to accord some weight to the argument, that the Minnesota Statute attempts to prohibit the non-resident creditor from resorting to the federal courts and therefore is invalid as to the non-resident in the federal court. We submit that the argument is without foundation. Such is not a necessary interpretation of the statute, but if it were the Federal Court would disregard only the provision prohibiting a resort to the Federal Court and would enforce every other provision of the Statute. The Statute does not in terms forbid the non-resident creditor to go into the Federal Court. The state has no power over the Federal Courts, neither to confer nor to take away jurisdiction. But it has power to legislate

concerning the property of its own citizens within its own borders and for its own courts, and it will not be presumed that it has attempted to do anything more. The statute has created the right of the creditor to have his debt paid out of the property of the deceased, but upon the condition that it be presented within the specified time, and has prescribed the state courts in which the remedy for the enforcement of that right must be had. This clearly it was competent for the state legislature to do. If that right is one for which a remedy is afforded in the federal courts under the jurisdiction conferred on these courts by the constitution and laws of the United States, the creditor may seek his remedy in the federal court. But the creditor's right depends upon the same condition in whatever court he seeks his remedy. If he would seek his remedy in a federal court, he must do so within the same time he is required to take it if he should resort to the state court.

If the Statute does attempt to prevent the creditor from finding his remedy in the Federal Court, then the matter comes to this: The Statute gives the creditor a right to have his debt paid from the estate of the deceased upon condition, first, that it shall be presented within the prescribed time, and second, that if disputed it shall be tried in the State Court. In that case the Federal Court will disregard the condition requiring the controversy to be tried in the state court, but enforce the condition as to time.

10 Fed. Cases (No. 5630) p. 382, *Goshorn v. Goshorn*. In Ohio a statute required an action to charge the widow and heirs for the debt of the ancestor to be commenced within one year, and required the action (if more than one person were liable) to be filed on the chancery side of state "Court of Common Pleas." Such an action was commenced on the equity side of the United States Circuit Court, and it was held that the statute prescribing the one year limitation was binding on the Federal Court.

In 80 U. S. (13 Wall.) *Chicago, etc., R. R. Co. v. Whitton*, where the intent to give the right of action only in the state court was clear, the right was upheld, but the restriction was disregarded, the court said, (pages 285, 286):

"It is undoubtedly true that the right of action exists only in virtue of the statute, and only in cases where the death was caused within the state. The liability of the party, whether a natural or artificial person, extends only to cases where, from certain causes, death ensues within the limits of the state. But when death does thus ensue from any of those causes, the relatives of the deceased named in the statute can maintain an action for damages. The liability within the conditions specified extends to all parties through whose wrongful acts, neglect or default death ensues, and the right of action for damages occasioned thereby is possessed by all persons within the description designated. In all cases, where a general right is thus conferred, it can be enforced in any Federal court within the state having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal Court by any provision of state legislation that it should only be enforced in a state court. The statutes of nearly every state provide for the institution of numerous suits, such as for partition, foreclosure,

and the recovery of real property in particular courts and in the counties where the land is situated, yet it never has been pretended that limitations of this character could effect, in any respect, the jurisdiction of the Federal court over such suits where the citizenship of one of the parties was otherwise sufficient. Whenever a general rule as to property or personal rights, or injuries to either, is established by state legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court, in such case, is not subject to state legislation."

See also 103 U. S. 559, *Ouachita County v. Wolcott.*

We submit that counsel for the plaintiff and the Circuit Court of Appeals have a wrong understanding of the provisions in question, Secs. 4509, 4511 above set out. Those sections provide that claims "shall be presented for examination and allowance"; also "that the probate court may require satisfactory vouchers or proofs to be produced in support of any claim." The probate court is not required to receive any voucher, evidence or proof other than the sworn statement of account. The probate court has no power or authority to require or order pleadings to be made, to call a jury, or to try a disputed claim upon the evidence of witnesses—certainly it is not required to do so. Neither administrator nor creditor can compel the probate court to grant any trial of the disputed claim according to the course of the common law or equity. In the matter of the presentation of claims to the probate court and their allowance that court is simply "auditor of claims," performing no "judicial function" in any proper

sense of the term. Such allowance of claims is not the "establishment of claims" which this court has held a state can not limit to its own courts.

103 U. S. 559, *Ouachita County v. Wolcott* is a case in which the court performed substantially the same functions as to claims against the county as the probate court of Minnesota does in the matter of claims against the estate of a decedent. The court held that it was valid legislation, and the non-resident bound to present the claim within the time fixed by the order of court, and that a failure to do so would be a bar to suit in the federal court.

In 133 U. S. 473, *Delaware County v. Diebold Safe and Lock Company*, the proceedings before the county commissioners for the allowance of claims were much more nearly assimilated to proceedings in actions at law than the proceedings in the probate courts of Minnesota. It was held that the controversy of which the federal courts have jurisdiction arose not on the hearing of the claim by the board of commissioners, but on the appeal from their allowance or disallowance of the claim.

135 U. S. 467, *County of Upshur v. Rich* also supports this proposition.

The requirement that claims shall be presented to the probate court cannot be objectionable. That is the only court that has power to order and direct their payment in the course of administration. No federal court has ever failed to respect such requirement. In case of the judgment we complain of and

have brought to this court for review, the federal court ordered the judgment to be presented to the probate court as a claim against the estate. By what authority have the state and its court been deprived of the right to say within what time it will receive such claims?

The Act of Congress provides that the circuit courts of the United States shall have jurisdiction "of all suits of a civil nature, at common law or in equity, where the matter in dispute," etc. This presentation of the claim to the probate court for allowance cannot be said to be a suit of a civil nature, at common law, or in equity. It does not meet one of the requirements of such a suit. There is no suit until an appeal. The aapeal is the commencement of the suit. Then pleadings are made, parties have the right to demand a trial, to call witnesses and have the matter in controversy judicially determined. It is only this judicial determination of issues between parties after examination before a court in a proceeding in which the parties have the right to call witnesses and introduce evidence, and to be heard which it is not competent for the state to confine to its own courts.

In *Yonley v. Lavender*, *supra*, the court adverts to the analogy between probate proceedings and proceedings under a state insolvency law. The analogy between probate proceedings in Minnesota and Receivership proceedings, or proceedings under a state insolvency law is perfect. The probate court is a court not only of plenary, but of exclusive juris-

diction of the estates of deceased persons. It seizes the property of the deceased and through its officer, the administrator, applies it to pay all lawful claims against the property of the deceased and then turns over to those entitled, free from all claims, what remains. It is a proceeding *in rem*. See 61 Minn. 343, *M'Namara v. Casserly*, for a clear statement of the character of probate proceedings in Minnesota. If a court appoint a receiver, it can (in the absence of a statute to the contrary) require all claims against the property to be filed in the court appointing the receiver, and require them to be so filed within any reasonable time it may fix; may try all disputed claims if it see fit, and may refuse to allow any claim not so filed and proven to share in the distribution of the fund—149 U. S. 473, *Porter v. Sabin*. In such case the creditor would have no right to insist on filing and proving his claim by sueing the receiver in a federal court. He would be compelled to file his claim in the court appointing the receiver, and to file it there within such time and make such proof of its validity as that court should order. The court has this power because it has the fund in its grip and the right to distribute it. The court is subject to the power of the legislature, and as to receivership proceedings, the legislature may regulate the procedure in its courts. Why may not the legislature do that which the court otherwise might do, i. e., require the claims to be filed in the court appointing the receiver, and the question of their validity to be tried in that court as a condition to sharing in the distribution of the fund?

Probate proceedings, in Minnesota, are nothing more nor less than a receivership of the property of the deceased for the benefit of his creditors. The jurisdiction given probate courts by the constitution is jurisdiction *in rem*. The probate court has no jurisdiction to try any question "at law" or "in equity" arising between parties. It simply seizes the property and disposes of the property. 61 Minn. *M'Namara v. Cassedy, supra.* Of necessity claims against the fund (the estate) must be presented to that court. Why may the state or the court not provide the time within which the claim shall be presented?

Administration in Minnesota is not the common law administration; the administrator is not the common law administrator; the rights of creditors are not the rights of creditors at common law; the presentation of a claim to the probate court is not in any sense the equivalent of the suit at common law or in equity against the administrator. The state, under its constitution and statutes and through its court has seized the estate of the deceased and has all the powers to dispose of it that a court of competent jurisdiction has to dispose of property taken into its control in a receivership proceeding. It has required that any claim, in order to share in the fund, must be presented and passed upon in a summary way in its probate court within a fixed time. That provision is binding on the world. But it has provided also that if a controversy shall arise as to whether the claim has been properly admitted to share in the fund, the parties

shall be entitled to a trial of that controversy according to the course of the common law, and that it shall be tried in the court of common law jurisdiction. Secs. 4665, 4668, 4669, 4670, 4672, 4673, 4675, 4675, 4677, 4678, cited above. It is this controversy, which the statute gives the right to have tried according to the course of the common law, of which the federal courts have jurisdiction. It arises with the right to appeal which is given by the statute. If the administrator appeals, the non-resident may remove the appeal to the federal court. If the creditor appeals he may do so by instituting his action in the federal court.

This further suggestion will show that it is not the intent nor effect of these statutory provisions to prohibit a resort to the federal courts. No statute in terms inhibits suits against the administrator in any federal court. If such right to sue exists and judgment were obtained against the administrator in the federal court and presented to the probate court within the time fixed by its order, it would be compelled to receive it as a claim against the estate.

We submit that the Circuit Court of Appeals has taken an entirely wrong view of the powers of the federal courts in such matters. The jurisdiction of the federal court is confined to "suits of a civil nature at law or in equity." It has no jurisdiction to administer the estate; no jurisdiction to determine how long the administration shall be kept open; no jurisdiction to provide within what time claims shall be filed; no jurisdiction to receive claims against the

estate nor to allow them in the same way that the probate court has; no jurisdiction to provide when final settlement shall be made, nor to supervise or control the state court in the administration of the estate. The federal court is not a probate court and has no probate jurisdiction. What it can do is in aid of and subordinate to the administration proceeding theretofore commenced and pending in the probate court. When in the course of the administration the right to institute a suit of a civil nature accrues the federal court may entertain that particular suit. That is the beginning and the end of its jurisdiction. In the Minnesota probate proceedings that right to institute a suit of a civil nature on claims of creditors is the statutory right of appeal.

The Circuit Court of Appeals says that "federal courts must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate courts of the state"; also "that the right of a non-resident creditor to sue in the federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement"; also "the right of a non-resident creditor to bring his action in the national court, ought not to be conditional or made to depend upon the time that a local court chances to approve a final settlement, when the time of such approval rests in its discretion and is largely a matter of convenience."

The effect of the decision of the Circuit Court of Appeals is to nullify the statutes of the state and the acts of the state court and to assert in the federal

court a supervisory power over the probate courts of the state. If claims can be allowed against the estate by the federal court within eighteen months, it follows that the administration of the estate must be kept open for at least eighteen months and claims must be received for eighteen months, regardless of the policy of the state requiring speedy settlement of estates and regardless of the statutes providing for speedy administration. If claims which never have been presented to the probate court within the time fixed by its order can be allowed by the federal court long after the time fixed has expired, it follows that the federal court can override the order of the probate court and the statute of the state. If an administrator can be sued and a claim allowed in the federal court after the probate court has closed the administration, it follows that the federal court may disregard the judgments of the probate court and the statutes of the state, and that the probate court is powerless to administer and the state without authority to provide for admisistration of the estates of its own citizens within the state. This decision still leaves the federal courts powerless to administer, but makes them mighty to prevent administration. The Circuit Court of Appeals impliedly admits that it is bound by the eighteen months limitation, i. e., the longest time the statute permits the probate court in any case to receive claims. Why is the federal court bound by one limitation of the statute and not by another? If the state has the right to say that claims must be presented within eighteen months, why not the right to say within six months? If the

right to say they must be presented within six months, then why not within such time not less than six months as the probate court shall by order and notice fix, having due regard to the condition of the estate.

The Circuit Court of the United States, as to many controversies over which it has jurisdiction, simply stands in the place of the state court having concurrent jurisdiction, administers the same law and declares the same right, though proceeding by its own method of procedure. As we have said, the controversy of which the federal court has jurisdiction in the matter of claims against the estates of decedents in Minnesota is the controversy which would arise on appeal to the district court of the state. But we conceive that if it be admitted that the Circuit Court of the United States stands in the place of the probate court the result would be the same in this case. The statute requires the probate court by order to fix a definite time, not less than six months, within which claims shall be presented. The creditor has a legal right to present the claim within that time, and if so presented the probate court must receive it. If the federal court stands in the place of the probate court, then the creditor has the legal right to present the claim by an action in the federal court within the time fixed by the order. But the creditor has no such legal right to have the probate court receive it after the time fixed in the order. Whether the probate court will receive it later is a matter of discretion, depending on the condition of the estate and the administration proceeding, and

somewhat upon the reason for the creditor's neglect to present it within the time limited. The federal court has no control of the estate, knows nothing of its condition, and is in no condition to exercise a discretion in the matter, which seems to us sufficient reason for denying to that court the powers of the probate court concerning this matter. But if it be that the power to exercise this discretion must be accorded to the federal court, then that power should be invoked by a bill in equity setting forth facts upon which the court could base an exercise of that discretion. To render judgment in an action at law, allowing the claim as a matter of right is not an exercise of discretion.

The federal court has not been content in this case to exercise the same powers that the probate court has in the matter of allowing claims, but has exceeded those powers in this: It has allowed a claim, not in its discretion, but as a matter of right, not only after the time fixed by the order had expired, but months after the estate had been finally settled and the administration closed.

Some or all of the following cases probably will be urged upon the court by the defendant in error in support of the judgment. But we think for the reasons hereinafter stated they are not sufficient to sustain it.

17 Fed. Rep. 820, *Chocett v. Morgan*. In this case it was conceded (and not an issue in the case) that plaintiff was not required to resort to the Probate Court to establish the claim. It was not urged

that the statute was a statute of limitation, so far as it prescribed a time for proving the claim. The defense made was, that the action being an equitable one the failure to present the claim to the Probate Court in the administration proceedings was laches sufficient to bar the action. The court held it not to be laches as matter of law, because evidence might show a sufficient excuse. The court also held that statutes of limitation do not bind Federal courts of equity. It cites as authority, 1 Fed. Rep. 692, *Johnston v. Roe*. An examination of that case will disclose that the sole ground of the decision was, that the state statutes of limitation are not binding on the Federal courts in equity. It also cites as an authority to the same point, 14 Fed. Rep. 886, *Tice v. School District*, but an examination of the opinion in this case will show that it holds squarely to the contrary.

18 Fed. Rep. 291, *Hartman v. Fishback*. This case, perhaps, fairly may be considered to support the plaintiff's claim. It stands alone, and is the decision of a single district judge. There is this difference, however, between the Minnesota statute and the Wisconsin statute there considered, which seems to have been the basis of the decision in the case. The Wisconsin statute contains a general prohibition of suits against executors and administrators, *and does not in terms confine the prohibition to state courts* (R. S. Wis. 1878, Sec. 3845), while the Minnesota statute *prohibits suits in the state courts only* (Sec. 4514). But in any event this

decision is not sound. It assumes that to sustain the statutory bar necessarily is to hold that the claimant could not go into the Federal court even within the time allowed to proceed in the state court. This is not true. The "time limit" affecting the cause of action may operate, though the "court limit," affecting merely the remedy, may not, and the federal courts generally hold the time limit operative though they disregard the limitation on the choice of the forum. This decision treats the statutory provision "as a special course of procedure" provided by the statute. But the time within which the proceeding must be instituted is not a part of the proceeding. We are unable to understand how a limitation which results in a destruction of the cause of action, which prevents a suit being maintained, not alone in some special tribunal, but in any and every tribunal subject to the control of the sovereignty prescribing the limitation, can be held anything other than a statute of limitations. It does not appear that there was in Wisconsin the same provision for a trial on appeal as in Minnesota, and if there was it does not appear to have been called to the attention of the court.

The Minnesota Supreme Court has decided that the Minnesota statutes do not provide merely a special procedure but, that they operate as an absolute bar to the cause of action. That settles the construction to be given to the Minnesota statute by this court. The case of Hartman v. Fishback cannot override the Minnesota decisions.

14 Peters 67, *Sugiam v. Broadnax.* The decision in this case did not involve the question of bar by lapse of time. The grounds of the decision are two: 1. By the terms of the sixth section of the state act in question the suit was excepted from the provisions of the sections of the act relied on to defeat the action. 2. The defense that the state statute prohibited suit in Federal court could not prevail, because such provision of the statute was invalid.

18 How. 503, *Union Bank v. Vaiden.* (*Jolly's Exrs.*) In this case upon the death of a defendant, his administrator was substituted and judgment went against him. Pending administration proceedings the complainant filed its bill in equity, based upon the fraud of the administrator, to compel the payment of the judgment out of the funds which the administrator was going to pay over to the heirs. The only point decided was: "The law of a state limiting the remedies of its citizens in its own courts, cannot be applied to prevent the citizens of other states from suing in the courts of the United States in the state for the recovery of any property or money there to which they may be lawfully or equitably entitled."

23 How. 90 *Green's Admx. v. Creighton.* In this case, pending administration proceedings, and while it was yet open to the creditor to prove his claim in the state court, he filed in the United States court, on the equity side, a bill for discovery of assets and to establish his debt. The only defense was that the jurisdiction was exclusive in the state court, which defense was overruled.

7 Wall. 425, *Payne v. Hook.* In this case the complainant filed her bill in equity, against the administrator, seeking relief on the ground of fraud. It was insisted that, because the powers of the state chancery courts to grant like relief did not begin until after a final settlement of the administration, the chancery powers of the Federal courts were likewise limited. This question of jurisdiction of the Federal Equity courts was the question decided.

88 U. S. (21 Wall.) 276, *Yonley v. Lavender.* This case is in truth an authority in favor of our position, rather than against us. It does declare that the creditor may resort to the Federal court to establish his claim but gives full effect to the provisions of the state statutes, and affirms the full power of the state to make such statutory provisions binding on all.

113 U. S. 73, *Hess v. Reynolds.* This case is in accord with Yonley v. Lavender, last referred to, but the only question involved was the right of removal.

119 U. S. 587, *Boyce v. Chapman.* In this case, a proceeding in equity, administration proceedings in the state of the domicil of the deceased had been abandoned, and no notice had been given to creditors. It was insisted that ancillary administration proceedings in another state had barred the creditor's claim, but the contention was overruled upon the ground that he had the right to collect his claim in the principal administration, and was not required to resort to the ancillary administration.

143 U. S. 215, *Lawrence v. Nelson*. This was an action in equity to charge the administrator, on the grounds of his fraud, with the payment of a judgment rendered against him as such administrator in an action in which he had voluntarily appeared. It was held that under such circumstances he was bound by the judgment, and that under the decisions of the Supreme Court of Illinois the settlement of the estate in the Probate Court of Illinois was not a bar to the action.

We respectfully submit that the judgments of the Circuit Court and Circuit Court of Appeals should be reversed.

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